

### A Look Back

John buys a 14-year-old car with lots of mileage from Fast Eddie's Used Cars. He pays cash, buckles up, and makes it almost all the way home before the car simply stops running. He sues FE for a complete refund. FE defends, saying he (1) never said the car would work, and (2) any idiot would know . . . . Do you rule in favor of John?

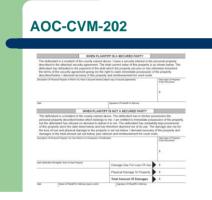
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### A Look Back

Sam buys a car from John, signing a written contract agreeing to pay \$500 now and \$2000 in six months. John sues for \$500, testifying that Sam made one payment of \$1500, but that he never paid the final \$500. Sam wants to testify that three months after he signed the agreement, the parties agreed that John would knock \$500 off the purchase price if Sam made a \$1500 payment immediately. Does the parol evidence rule prohibit your consideration of this evidence?

# TODAY'S LESSON ON ACTIONS TO RECOVER PERSONAL PROPERTY

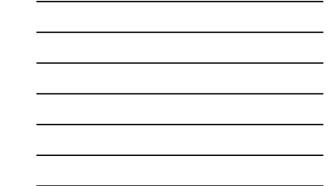
Or, Dona bitches some more about the complaint form . . .



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# **Classification Activity**

Non-secured party?	Secured party?
"He took my property!"	"She defaulted!"



Wrong Done	Remedy Sought	Governing Lav
∆ has property	\$ (conversion)	Mostly case la
belonging to		
me	Recovery of	
(Tort)	property (+\$) *	
$\Delta$ bought property	\$	UCC-Art. 2, RIS
from me & failed		
to pay for it.	Recovery of	
(Breach of	property	UCC-Art. 9, RIS
contract)		

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#### Action for Conversion Remedy Sought: Forced Sale/\$

- Plaintiff is the owner of property.
- Property was wrongfully taken or wrongfully retained from him.
- Defendant is person who wrongfully took or retained property.
- Remedy is fair market value of property at time wrongfully taken or retained, plus interest at 8% from that date until paid.

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#### Action for Conversion Remedy Sought: Return of property

#### **Essential Elements**

- Plaintiff is the owner of property.
- Property was wrongfully taken or wrongfully retained.
- Defendant is in possession of the property.
- Remedy is return of the property and damages for physical damage to property and loss of use.

Action by Secured Party

# ACTIVITY: LEARNING THE LINGO

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# **Recover Possession Secured Party**

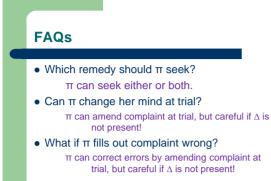
- Plaintiff is seller of goods or lender of money.
- Valid security agreement.
- Security interest in property seeking.
- Buyer defaulted in payment.
- Remedy is possession of the property.
- All property listed as security if purchased at one time
- Otherwise apply RISA, if applicable

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## **Valid Security Agreement**

- In writing.
- Contains a description of property to be security.
- Indicates an intention to create a security agreement.
- Authenticated by the debtor.
- If consumer credit contract, dated.





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#### Note well:

- Damage calculation for tort depends on whether π wants \$ (forced sale) or return of property.
- For secured party, valid SA is a BIG DEAL.
- Self-help allowed if no breach of peace.
- RISA rule for allocation of payment . . .
- Amount of debt not relevant in SP action for property.
- Things to come: commercially reasonable sale

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# RISA Rule for Allocation of Payment

• 8/5/15	chair	\$500		
• 2/15/16	couch	\$1,000		
• 8/23/16	dining room set	\$2,500		
<ul> <li>Defaults on 11/1/16.</li> </ul>				
contract co	All purchases from same seller, with each new contract consolidated with old. Monthly payme of \$85 (\$15 \$\sigma\$ interest).			
Each month's \$70 payment toward principal n be allocated to chair = FIFO.				

### What makes this fair:

- Debtor has paid \$4000 toward \$4500 debt.
- Secured party sells vehicle for \$3000.
- After deducting \$200 for expenses, \$500 goes to SP to pay off debt, and \$2300 is returned to Debtor.

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# Likely lawsuit #2: Action for the deficiency

- Debtor has paid \$1000 toward \$5000 debt.
- Secured party sells vehicle for \$3000.
- After deducting \$200 for expenses, \$2800 goes to SP, decreasing balance due to \$1200.
- SP brings action for money owed for \$1200. Debtor may defend by challenging CRM of sale.

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#### Alternate version of lawsuit #2

- Debtor has paid \$4000 toward \$4500 debt.
- Secured party sells vehicle for \$1000.
- After deducting \$200 for expenses, \$500 goes to SP to pay off debt, and \$300 is returned to Debtor.
- Debtor sues, challenging sale based on statutory requirement that sale be conducted in CRM. If CR sale would have yielded \$3000, Debtor entitled to damages in amount of \$2000 +.